

E-Filed on 3/13/08

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA Commercial Mortgage Company,  
USA Capital Realty Advisors, LLC,  
USA Capital Diversified Trust Deed Fund,  
LLC,  
USA Capital First Trust Deed Fund, LLC,<sup>1</sup>  
USA Securities, LLC,<sup>2</sup>  
Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**Motion to Approve Settlement  
Agreement With USA Capital  
Diversified Trust Deed Fund, LLC  
with Certificate of Service**

Date: OST Requested – March 25, 2008  
Time: OST Requested – 9:30 a.m.

The USACM Liquidating Trust (*Trust*), successor to USA Commercial Mortgage Company (*USACM*) under the confirmed Joint Plan of Reorganization, moves this Court for an order approving its settlement with USA Capital Diversified Trust Deed Fund, LLC

<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

<sup>2</sup> This bankruptcy case was closed on December 26, 2007.

(DTDF) in the form attached as **Exhibit 1**. This Motion is based upon the following Memorandum of Points and Authorities and is supported by the Court's record.

## **MEMORANDUM**

### **Background**

The Trust will not recite facts the Court is well familiar with, including the filing of each of five Debtors' chapter 11 voluntary bankruptcy petitions, prosecution of the bankruptcy cases, and ultimately confirmation of the Joint Plan of Reorganization.<sup>3</sup> That Plan became effective on March 12, 2007.

Certain issues were not resolved by USACM and DTDF before the Plan was confirmed. Those issues were reserved for future determination and were generally described on pages 73-74 of the Debtors' First Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization, filed on November 15, 2006. For the Court's convenience, we quote:

#### **6. Remaining Disputes Between USACM and DTDF.**

Despite substantial efforts among the USACM Committee and the DTDF Committee, these two Committees have been unable to reach agreement on a resolution of the disputes between USACM and DTDF. These parties will continue to attempt to settle the remaining disputes prior to the Confirmation Hearing. If any such settlements are reached, the details of such settlement(s) will be posted on the USACM website at [usacapitalcorp.com](http://usacapitalcorp.com). The Debtors will request that the Court approve such settlements at the confirmation hearing. The disputes between USACM and DTDF primarily consist of the following:

- a. The allowed amount of the DTDF general unsecured claim against USACM.

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<sup>3</sup> See Confirmation Order for the Debtors' Third Amended Joint Plan of Reorganization. See Order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization," As Modified Herein, docketed by the Court on January 8, 2007, as Docket No. 2376, and Findings of Fact and Conclusions of Law in Support of the "Order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization, As Modified Herein," docketed by the Court on January 8, 2007, as Docket No. 2377.

b. The allocation of the USAIP \$58 Million Promissory Note as between USACM and DTDF.

c. The assignment of priority (i.e., first priority liens or second priority liens) of the collateral pledged by USAIP for both the DTDF 10-90, Inc. Loan and the IP Security Agreement. (The IP Security Agreement is dated May 31, 2006 and was made by USAIP in favor of USACM, DTDF, FTDF, USA Securities and USA Realty as modified by the Order Approving the Agreement with Investment Partners entered by the Bankruptcy Court on July 24, 2006.)

d. USACM's right to recovery from DTDF of \$4,641,402 in Prepaid Interest, given DTDF's claims against USACM, including for Diverted (or Unremitted) Principal, and the possibility of offsetting such claims.

e. DTDF's payment of the approximately \$124,000 per month management fee to USA Realty, which management fee is then paid over by USA Realty to USACM.

f. The refund of the 2% Holdback to DTDF and the payment by DTDF of a one percent (1%) servicing fee to USACM for both the prepetition and postpetition periods.

g. The amount and payment of DTDF's share of the professional fees and costs incurred by the Debtors' professionals in the USACM Estate commencing on the Petition Date. The USACM Committee and the DTDF Committee will continue to work to settle these disputes. If these Committees are unable to resolve these disputes in whole or in part, the USACM Trust and the Post Effective Date DTDF will litigate these disputes after the Effective Date.<sup>4</sup>

After the Effective Date, Michael A. Tucker, Manager of Reorganized DTDF, and Geoffrey L. Berman, Trustee of the Trust, continued to discuss and eventually negotiate the unresolved disputes. After a meeting last week, DTDF and the Trust reached conceptual approval of an agreement, subject to approval by the DTDF Board and this Court.

The proposed settlement is set forth in a letter agreement signed by the parties.

In summary, the parties' settlement provides:

- DTDF is allowed a \$128 million unsecured claim in the USACM Estate;

<sup>4</sup> Debtors' First Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization, filed on November 15, 2006, at 73-74.

DTDF hires Diamond McCarthy, LLP to pursue certain DTDF Litigation Claims, that will generally be prosecuted jointly with similar claims asserted by the Trust through Diamond McCarthy;

DTDF and the Trust will jointly share proceeds of litigation claims, including those DTDF Litigation Claims prosecuted by Diamond McCarthy, on a 50-50 basis for the first \$20 million of recoveries, and then DTDF receiving 35% of all recoveries thereafter;

DTDF, by reason of its allowed general unsecured claim, will share in recoveries from non-litigation claims and/or assets of the Trust on a pro-rata basis with all other allowed general unsecured creditor claims;

DTDF and the Trust share proceeds of the \$58 million note made by USA Investment Partners, LLC on an equal basis; and

DTDF and the Trust release each other.

### Discussion

The Plan does not expressly require this Court's approval of proposed settlements. Rather, the Plan provides:

The USACM Trust shall have the discretion, subject to review by the USACM Trust Committee appointed in accordance with the USACM Trust Agreement, to retain and compensate professionals, compensate the USACM Trustee, compensate the Debtors' Professionals for any assistance of information requested of them by the USACM Trust, employ staff or agents, object to Claims, realize assets, whether by suit, compromise, release or otherwise, and take all actions reasonable to maximize the recovery to beneficiaries of the USACM Trust.<sup>5</sup>

The Debtors or the Post-Effective Date Entities may commence, prosecute, defend against, recover on account of, and settle all rights, Claims, causes of action, defenses, and counterclaims in their sole discretion in accordance with what is in the best interests, and for the benefit, of the Debtors or the Post-Effective Date Entities.<sup>6</sup>

<sup>5</sup> Plan at 47-48.

<sup>6</sup> Plan at 59.





1 Dated: March 13, 2008.

2 **LEWIS AND ROCA LLP**

3  
4 By /s/ Rob Charles (#006593)  
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11 *Attorneys for the USACM Liquidating Trust*

12 **PROOF OF SERVICE**

13 COPY of the aforementioned sent via e-  
14 mail or U.S. First Class Mail on March  
15 13, 2008 to the parties listed on Post-  
16 Effective Official Service List for Limited  
17 Notice No. 4 Dated January 8, 2008.

18 /s/ Christine E Laurel  
19 Christine E Laurel  
20 Lewis and Roca LLP  
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**Declaration**

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court. I make the following statements based upon my personal knowledge, except where otherwise indicated.

2. I am Trustee of the USACM Liquidating Trust (*Trust*), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, *In re USA Commercial Mortgage Company*, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada

3. Certain issues were not resolved by USACM and USA Capital Diversified Trust Deed Fund, LLC (*DTDF*) before the Plan was confirmed. Those issues were reserved for future determination and were generally described on pages 73-74 of the Debtors' First Amended Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization, filed on November 15, 2006.

4. I have been involved in the negotiation and resolution of the DTDF claims since the Effective date.

5. Diamond McCarthy (Diamond) has been actively investigating potential causes of action on behalf of the Trustee since its employment was approved by the Court in January.

6. After the Effective Date, Michael A. Tucker, Manager of Reorganized DTDF and I, as Trustee of the Trust, have discussed on a regular basis the unresolved disputes

7. After a meeting last week, DTDF and the Trust reached conceptual approval of an agreement, subject to approval by the DTDF Board and this Court.

8. The proposed settlement is set forth in a letter agreement signed by the parties. DTDF will retain Diamond to prosecute DTDF Litigation Claims, which are

1 those causes of action not yet filed by DTDF against any of the potential litigation targets  
2 as has already been identified by DTDF, the Trust and Diamond McCarthy, and any other  
3 entities identified by Diamond and agreed to by DTDF.

4 9. As explained in the motion to which this declaration is attached, I believe  
5 that the proposed compromise is a fair settlement of the claims and disputes between  
6 DTDF and the Trust and is in the best interests of the creditors of the USACM Trust.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed Thursday, March 13, 2008 at Los Angeles, California.

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10   
11 Geoffrey L. Berman, Trustee  
12 USACM Liquidating Trust  
13 gberman@dsi.biz  
14 c/o Development Specialists, Inc.  
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